

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**IN RE: NATIONAL PRESCRIPTION,
OPIATE LITIGATION**

MDL NO. 2804

Case No. 17-MD-2804

Judge Dan Aaron Polster

THIS DOCUMENT RELATES TO:

Rees v. McKesson Corporation, et al.
MDL Case #1:18-OP-45252

DeMaro v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45465

Delancey v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45480

Wood v. Purdue Pharma L.P., et al.
MDL Case #1:18-OP-45264

Cruz v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45466

Stewart v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45481

Salmons v. Purdue Pharma L.P., et al.
MDL Case #1:18-OP-45268;

Paul v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45467

Shewmake v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45482

Ambrosio v. Purdue Pharma L.P., et al.
MDL Case #1:18-OP-45375

Lechuga v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45468

Weatherwax v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45483

Whitley v. Purdue Pharma L.P., et al.
MDL Case #1:18-OP-45598

Brumbarger v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45469

Martinez v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45484

Roach v. McKesson Corporation, et al.
MDL Case No. #1:18-OP-45662

Means v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45470

Warren v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45486

Hunt v. Purdue Pharma L.P., et al.
MDL Case No. #1:18-OP-45681

Peterson v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45472

Carlson v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45487

Hanlon v. Purdue Pharma L.P., et al.
MDL Case No. #1:19-op-45052

Hampel v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45473

Flach v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45488

Frost v. Purdue Pharma L.P., et al.
MDL Case No. #1:18-op-46327

Whittaker v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45475

Ivie v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45489

Moore v. Purdue Pharma L.P., et al.
MDL Case No. #1:18-op-46305

Tuttle v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45476

Cherry v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45490

Artz v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45459

Hamawi v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45477

Ortiz v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45492

Rodriguez v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45463

Gauthier v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45478

Meinecke v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45493

Ellis v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45464

Simonson v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45479

Brant v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45494

Williams, v. Purdue Pharma, L.P., et al.
MDL Case No. #1:19-op-45485

**JOINT MOTION FOR AN ADDITIONAL 60-DAY STAY OF ALL
REMAINING CLASS CERTIFICATION BRIEFING DEADLINES**

Plaintiffs in the above-captioned cases (“NAS Plaintiffs”) and Defendants identified below¹ respectfully request an additional 60-day stay of all remaining class certification deadlines in light of the ongoing COVID-19 pandemic.² The parties have requested and been granted two stays of all class certification deadlines. Dkts. 3226, 3290. The current deadlines require that the parties complete outstanding depositions by August 7, with Defendants’ opposition to Plaintiffs’ motion for class certification being due August 10 and Plaintiffs’ reply on September 15. The parties note that defendant Assertio Therapeutics, Inc. is opposed to this relief.

The COVID-19 epidemic continues to rage in the United States; today, there are nearly 2.9 million cases.³ And while many states began phased reopening plans, in the wake of a recent increase in cases in many parts of the country, those plans are being revised and reversed.⁴ These circumstances have continued the significant obstacles set forth in the parties’ second joint motion to performing discovery on plaintiffs and completing the remaining fact and expert depositions. An additional 60-day stay is required to permit the parties to collect outstanding records and to allow circumstances to improve before the remaining expert and fact witness depositions necessary to the parties’ class certification briefs can reasonably take place.

¹ Certain defendants that may be named in the above-captioned cases or soon to be filed amended pleadings are not subject to personal jurisdiction in some or all of these cases, in which responsive pleadings are not yet due pursuant to the Court’s orders. Defendants submit this filing subject to, and without waiver of, all defenses, including lack of personal jurisdiction, no service of process, or ineffective service of process, in each case.

² The parties have requested and been granted two stays of all class certification deadlines due to the COVID-19 pandemic. Dkts. 3226, 3290.

³ See CDC, *Case of Coronavirus Disease (COVID-19) in the U.S.* (last updated July 7, 2020) available at <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

⁴ Jasmine Lee et al., *See How All 50 States Are Reopening (and Closing Again)*, N.Y. TIMES (last updated July 7, 2020), available at <https://www.nytimes.com/interactive/2020/us/states-reopen-map-coronavirus.html>.

In particular, although the State of Ohio has instituted some reopening, Governor DeWine has placed six counties on “red alert,” including Franklin County where Ashley Poe, a newly identified class representative, resides.⁵ And while Defendants have diligently pursued collection of Ms. Poe and her child’s medical records, they continue to wait on responses to over thirty-five third party subpoenas. Defendants are also awaiting medical records related to an alleged NAS minor they recently learned is being included as part of Ms. Barnwell’s claim. Defendants understand that the Poe and Barnwell records are delayed because healthcare resources have been directed toward managing the pandemic. Likewise, Defendants just received on July 7 additional authorizations from Plaintiff Jacqueline Ramirez, to collect records from Medi-Cal, the state insurance provider, and from an additional pharmacy. Once Defendants receive complete responses to these record requests, additional time will be needed to review the records and then schedule and depose Ms. Poe and any other relevant witnesses.

In addition to the complications described above, significant and ongoing obstacles created by the COVID-19 response make completing the remaining depositions infeasible. First, the two fact witnesses in this case who remain to be deposed are single parents of young children with significant caretaking responsibilities, and obtaining alternate child care is challenging or potentially unsafe in light of the COVID epidemic. In addition, Ms. Artz is currently receiving treatment for a brain tumor. Under those circumstances, in-person deposition is not feasible and even preparing and sitting for a videoconference deposition would be potentially hazardous to her health.

⁵ Rich Exner, Cuyahoga, 6 other counties placed on red alert for coronavirus by Ohio Gov. Mike DeWine, Cleveland.com, *available at* <https://www.cleveland.com/open/2020/07/cuyahoga-6-other-counties-placed-on-red-alert-for-coronavirus-by-ohio-gov-mike-dewine.html> (last visited July 7, 2020).

Second, the expert witnesses remaining to be deposed also have significant constraints on their time and capacity that render it problematic or impractical for them to prepare and sit for a deposition before the current deadline. The experts to be deposed are physicians and epidemiologists, several of whom are involved in the medical response to COVID-19. They reside in areas some of which, including Texas and California, are experiencing spiking cases, and they themselves are required to be quarantined either by law or by their universities. Deposing these experts at this time is not in the best interest of their patients or the community at large.

Finally, Defendants may also need to depose medical professionals who provided relevant care to Ms. Poe, Ms. Artz, or their children. These individuals—whom Defendants cannot identify without reviewing Ms. Poe’s complete records and deposing Ms. Poe and Ms. Artz—might not agree to sit for depositions under the current circumstances, especially considering they have no ties to either side of this case. Like the expert witnesses, these individuals may be working on the front lines of the COVID-19 pandemic and have limited or no availability to prepare or sit for a deposition. For all of these reasons, the parties request that the Court set the following revised scheduling deadlines:

	Current Deadline	Proposed Deadline
Deposition of Defendants’ Expert Witnesses	August 7, 2020	October 6, 2020
Defendants’ Opposition to Class Certification	August 10, 2020	October 9, 2020
Plaintiffs’ Reply in Support of Class Certification	September 15, 2020	November 13, 2020

Dated: July 9, 2020

Respectfully submitted,

/s/ Marc E. Dann

Marc E. Dann (0039425)
Emily C. White (0085662)
P.O. Box 6031040
Cleveland, OH. 44103
(216) 373-0539
notices@dannlaw.com

Counsel for NAS Plaintiffs

/s/ Thomas E. Bilek

Thomas E. Bilek
Kelly Cox Bilek
THE BILEK LAW FIRM, L.L.P.
700 Louisiana, Suite 3950
Houston, TX 77002
(713) 227-7720
tbilek@bileklaw.com
kbilek@bileklaw.com

Counsel for NAS Plaintiffs

/s/ Charles C. Lifland

Charles C. Lifland
O'MELVENY & MYERS LLP
400 S. Hope Street
Los Angeles, CA 90071
(213) 430-6000
clifland@omm.com

Attorneys for Defendants Johnson & Johnson; Janssen Pharmaceuticals, Inc.; Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a Janssen Pharmaceuticals, Inc.; and Janssen Pharmaceutica, Inc. n/k/a Janssen Pharmaceuticals, Inc.

/s/ John J. Haggerty

John J. Haggerty
FOX ROTHCHILD LLP
2700 Kelly Road, Suite 300
Warrington, PA 18976-3624

/s/ Emily S. Ullman

Geoffrey E. Hobart
Emily S. Ullman
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street NW
Washington, DC 20001
Tel: (202) 662-5281
ghobart@cov.com
eullman@cov.com

Counsel for McKesson Corporation

/s/ Donna M. Welch

Donna M. Welch, P.C.
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, IL 60654
Tel: (312) 862-2000
donna.welch@kirkland.com

Attorney for Defendants Allergan plc (appearing specially), Allergan Finance, LLC (f/k/a/ Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc.), Allergan Sales, LLC, and Allergan USA, Inc.

/s/ William E. Padgett

William E. Padgett
Kathleen L. Matsoukas
BARNES & THORNBURG LLP
11 South Meridian Street
Indianapolis, IN 46204
Tel: (317) 236-1313
Fax: (317) 231-7433
william.padgett@btlaw.com
kathleen.matsoukas@btlaw.com

Counsel for Defendants H. D. Smith, LLC f/k/a H. D. Smith Wholesale Drug Company, H. D. Smith Holdings, LLC and H. D. Smith Holding Company

Tel.: (215) 345-7500
Fax: (215) 345-7507
jhaggerty@foxrothschild.com

Counsel for Prescription Supply Inc.

/s/ Terry M. Henry

Terry M. Henry
Melanie S. Carter
Justina L. Byers
BLANK ROME LLP
130 N. 18th Street
One Logan Square
Philadelphia, PA 19103
Tel: (215) 569-5644
Fax: (215) 832-5644
THenry@blankrome.com

Counsel for Defendants Teva Pharmaceutical Industries Ltd.; Teva Pharmaceuticals USA, Inc.; Cephalon Inc.; Watson Laboratories, Inc.; Actavis LLC; and Actavis Pharma, Inc. f/k/a Watson Pharma, Inc

/s/ Kelly A. Moore

Kelly A. Moore
MORGAN, LEWIS & BOCKIUS LLP
101 Park Avenue
New York, NY 10178
Tel: (212) 309-6612
Fax: (212) 309-6001
kelly.moore@morganlewis.com

John P. Lavelle, Jr.

MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103
Tel: (215) 963-4824
Fax: (215) 963-5001
john.lavelle@morganlewis.com

Attorneys for Defendants Rite Aid of Maryland, Inc. and Rite Aid Corp.

/s/ Tina M. Tabacchi

Tina M. Tabacchi

/s/ Angela R. Vicari

Angela R. Vicari
Andrew K. Solow
Arnold & Porter Kaye Scholer LLP
250 West 55th Street
New York, NY 10019
212-836-8000
Angela.Vicari@arnoldporter.com
Andrew.Solow@arnoldporter.com

Jonathan Stern

Arnold & Porter Kaye Scholer LLP
601 Massachusetts Avenue, NW
Washington, DC 20001
202-942-5000
Jonathan.Stern@arnoldporter.com

Sean Morris

Arnold & Porter Kaye Scholer LLP
777 South Figueroa Street, 44th Floor
Los Angeles, CA 90017
Sean.Morris@arnoldporter.com

Attorneys for Defendants Endo Pharmaceuticals Inc. and Endo Health Solutions Inc.

/s/ James W. Matthews

James W. Matthews
Katy E. Koski
Ana Francisco
Kristina Matic
FOLEY & LARDNER LLP
111 Huntington Avenue
Boston, MA 02199
Tel: 617.342.4000
Fax: 617.342.4001
jmatthews@foley.com
kkoski@foley.com
afrancisco@foley.com
kmatic@foley.com

Counsel for Defendant Anda, Inc

/s/ Robert A. Nicholas

Tara A. Fumerton
JONES DAY
77 West Wacker
Chicago, IL 60601
Tel.: (312) 782-3939
Fax: (312) 782-8585
tmtabacchi@jonesday.com
tfumerton@jonesday.com

Counsel for Walmart Inc.

/s/ Enu Mainigi
Enu Mainigi
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, DC 20005
Telephone: (202) 434-5000
Fax: (202) 434-5029
emainigi@wc.com

Counsel for Defendant Cardinal Health, Inc.

/s/ Ronda L. Harvey
Ronda L. Harvey
Fazal A. Shere
BOWLES RICE LLP
600 Quarrier Street
Charleston, West Virginia 25301
Telephone: (304) 347-1100
rharvey@bowlesrice.com
fshere@bowlesrice.com

Counsel for Defendants Kroger Entities

/s/ Robert M. Barnes
Robert M. Barnes
Scott D. Livingston
Joshua A. Kobrin
Matthew R. Mazgaj
MARCUS & SHAPIRA, LLP
35th Floor, One Oxford Centre
301 Grant Street
Pittsburgh, PA 15219
Phone: (412) 471-3490
Fax: (412) 391-8758
rbarnes@marcus-shapira.com

Robert A. Nicholas
Shannon E. McClure
REED SMITH LLP
Three Logan Square
1717 Arch Street, Suite 3100
Philadelphia, PA 19103
Tel: (215) 851-8100
Fax: (215) 851-1420
rnicholas@reedsmith.com
smcclure@reedsmith.com

Counsel for AmerisourceBergen Drug Corporation and AmerisourceBergen Corporation

/s/ Eric R. Delinsky
Eric R. Delinsky
Alexandra W. Miller
ZUCKERMAN SPAEDER LLP
1800 M Street, NW
Suite 1000
Washington, DC 20036
Phone: (202) 778-1800
Fax: (202) 822-8106
edelinsky@zuckerman.com
smiller@zuckerman.com

Counsel for CVS Rx Services, Inc.; CVS Indiana, LLC

/s/ Kaspar Stoffelmayr
Kaspar Stoffelmayr
BARTLIT BECK LLP
54 West Hubbard Street
Chicago, IL 60654
Tel. (312) 494-4400
kaspar.stoffelmayr@bartlitbeck.com

Counsel for the Walgreens Defendants

/s/ Daniel G. Jarcho
Daniel G. Jarcho
ALSTON & BIRD LLP
950 F Street NW
Washington, DC 20004
Tel: (202) 239-3254

livingston@marcus-shapira.com
kobrin@marcus-shapira.com
mazgaj@marcus-shapira.com

Counsel for HBC Service Company

Fax: (202) 239-3333
daniel.jarcho@alston.com

Cari K. Dawson
Jenny A. Hergenrother
ALSTON & BIRD LLP
1201 West Peachtree Street NW
Atlanta, GA 30309
Tel: (404) 881-7000
Fax: (404) 881-7777
cari.dawson@alston.com
jenny.hergenrother@alston.com

CERTIFICATE OF SERVICE

A copy of the foregoing was filed via the Court's electronic filing system on July 9, 2020. Notice of this filing will be sent by e-mail through the Court's electronic case-filing system to all counsel of record.

/s/ Marc Dann
Marc Dann (0039425)